

INSIDE *ALEC*

A PUBLICATION OF THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL

 FOCUS ON
HEALTH CARE

Arizona Poised to Block Single-Payer Health Care

Constitutional amendment
will secure patients' rights,
stop individual mandate

Top 10 "Beach Reads"
on ObamaCare

New Model Legislation:
Spring Task Force Summit

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Q&A with Rep. Nancy Barto

ALEC Member Talks Health Care and HCR 2014,
Arizona's *Healthcare Freedom Act* on the 2010 Ballot

Nancy Barto is serving her third term in the Arizona House and is Chairman of the Health and Human Services Committee. Rep. Barto represents Legislative District 7 in Phoenix, Arizona.



Why did you sponsor the *Healthcare Freedom Act* in Arizona?

Concerns are mounting that the health care President Obama has in mind will leave patients at the mercy of a committee of Washington bureaucrats that would determine health care standards rather than the doctors who are actually providing the care.

Decisions about health care should be between doctor and patient – no one else. But the President and Congress are intent to pass government-centered health care this year, so allowing Arizona citizens to protect their fundamental health care rights is of the essence.

What will the *Healthcare Freedom Act* do?

Arizona's *Healthcare Freedom Act*, which is modeled after ALEC's *Freedom of Choice in Health Care Act*, will do two things: First, it will prevent coercive, one-size-fits-all universal coverage in Arizona by allowing citizens not to participate in a mandated system of any kind.

Second, it will guarantee Arizona citizens' rights to purchase health care with their own money.

These seem like fundamental rights that should already be guaranteed by our U.S. Constitution, but without express protections in law, they are at serious risk. With HCR 2014 on the ballot, Arizona voters will have the opportunity to preserve their rights no matter what mandated reforms are put in place.

What about the President's health care reform plan concerns you most?

There are many, but the fact that a public option continues to be a main focal point of reform is most worrisome for three reasons. A public or government-controlled plan, meant to provide a lower cost insurance option for the uninsured will be neither low cost nor simply another health care option. Most importantly, access to quality health care, which we take for granted in the United States, will evaporate.

How do you foresee quality and access being compromised by a government "option"?

To control costs, most countries that provide universal health coverage deny critical procedures to patients who need them. What is quality health care if it's not getting the treatment you need when you need it?

The results are critical physician shortages, weeks or months waiting for what we consider routine treatment such as MRI or CT scans and lower life expectancy rates. For example, the average wait for hip replacement surgery in Norway is more than four months and an estimated 280,000 Norwegians are waiting for care on any given day out of a population of 4.6 million.

Second, whether we are talking about the postal service at Christmas-time or the Veterans Affairs system, government has proven time and again that

it is incapable of running businesses efficiently. Governments are run by politicians, not businessmen. Politicians are susceptible to political interests which are quite capable of generating political pressure to benefit their own ends – such as lobbying for specific drug therapies or treatments. Furthermore, government uses other peoples' money, providing no incentive for finding waste and fraud within the bureaucracy when raising taxes is an ever-ready solution to rising costs.

And third, a government-run health care option will eliminate other options. Inevitably, if the government increases its role even more in the health care business, private carriers will be unable to compete with the lower cost public option. Also, businesses will off-load their employee coverage as quickly as they can. In time, Americans will have no other option except the public option.

The rhetoric swirling around the health care debate can be confusing, especially since real health care reforms are critically needed. In their zeal for another government 'bailout,' I fear Americans will be led to believe health care by government is the answer – that quality will not be diminished and costs reduced.

Countries with similar options have proven otherwise. Patients in Canada, the U.K. and Europe are routinely denied care, are subject to high taxes, and the problem of rising costs of health care is still unaddressed. ||

Oklahoma Passes ALEC's Comprehensive Legal Reform

BY AMY KJOSE

On May 21, Oklahoma Governor Brad Henry signed into law H.B. 1603, the most comprehensive piece of legal reform legislation ever passed by the Oklahoma state government. Gov. Henry's approval followed the legislature's resounding support of legal reform by enacting H.B. 1603 (45-1 in the Senate and 86-13 in the House).

Bill authors Rep. Dan Sullivan and Senate President Pro Tempore Glenn Coffee were able to move forward a comprehensive proposal that includes provisions reflecting many of ALEC's Civil Justice Task Force model policies. Reforms of note in H.B. 1603 include class-action reform; a cap on the amount a party must post before appealing a verdict; venue reform that will keep citizens of other states from engaging in "litiga-

tion tourism;" a redefinition of the term "frivolous lawsuit;" junk science and expert witness reforms; asbestos and silica reform; caps on noneconomic damages, except in cases of severe disfigurement and reckless disregard; gun manufacturer liability protection; volunteer immunity; and teacher liability protection.

Thanks to the passage of H.B. 1603, Sooners now can look forward to the economic and medical benefits that are sure to accompany such positive reforms. Sen. Coffee points out that the legislature has taken "great strides toward protecting and preserving [Oklahoma's] business climate and in keeping health care accessible and affordable for all Oklahomans."

According to Rep. Sullivan, the passage of H.B. 1603 will "send a message that Oklahoma appreciates those who

are willing to spend their capital and resources to create opportunities for [Oklahoma] citizens." In the words of President Pro Tempore Coffee, "Oklahoma is open for business." And in the current state of the economy, there is no better message for state legislatures to send. Coffee, Sullivan, and the Oklahoma lawmakers who so emphatically supported H.B. 1603 keenly recognized the need for competitive, comprehensive legal reform.

Sullivan pointedly offers that in past, "some businesses and medical providers have felt more like a mark for lawsuits" than an employer. This legislation strikes the balance in the legal system that "will protect the rights of [Oklahoma's] citizens to seek legal redress while working to eliminate the ability of some to use [Oklahoma's] civil justice system for improper purposes."

Similarly aimed reforms in states like Mississippi and Texas brought doctors, jobs, and economic savings to the states. Mississippi's reforms helped to decrease malpractice insurance rates by 30 to 45 percent within a few short years. And at least 60,000 new jobs were created within four years of the reform's passage. Texas's legal reforms have contributed to the arrival of at least 14,000 new doctors in the state.

"We will no longer be exporting our best and brightest young health care professionals to our neighboring states," said Sen. Coffee. "And small business men and women will not have to fear being one lawsuit away from bankruptcy." ||



Rep. Dan Sullivan and Sen. Glenn Coffee co-authored Oklahoma's H.B. 1603.

Amy Kjose is the Director of ALEC's Civil Justice Task Force.

Post-Kelo Reponses: Has Your State Done Enough?

Protecting Property Owners from Eminent Domain Abuse

BY ELLEN CHAMBERS

In 2005, the United States Supreme Court disagreed with the homeowners in a controversial 5-4 decision. The Court held in *Kelo v. New London* that condemning land under the Taking Clause of the Fifth Amendment for “economic development” was a sufficient “public use.” In the same decision, the Court did make clear that each individual state is free to tighten its definition of “public use.”

Three years later, 42 states have responded to the Supreme Court’s invitation. Accordingly, in 2008, the Institute for Justice, a public interest law firm campaigning for private property rights, issued the *50 State Report Card; Tracking Eminent Domain Reform Legislation since Kelo* to grade states on their eminent domain law and whether the updates implemented meaningful change toward protecting individual private property rights. At the time the report card was issued, 29 states remained at a C average or lower. Among those 29 states, eight states had failed to implement any reform. The total grade point average for all 50 states is currently a 1.9, roughly equating to a C-.

Three states (Florida, North Dakota and South Dakota) did, however, receive A’s. These high marks were earned by passing meaningful legislation that dealt with “public use” determinations and private-to-private property transfers. Florida, leading the charge, passed

a bill that created a 10-year waiting period before property seized through eminent domain can be transferred to other private entities. This bill effectively eliminates the usage of eminent domain laws for private commercial development. North Dakota passed a strict constitutional amendment that makes clear that the definition of “public use” does not include the public benefits realized through economic development. Lastly, and perhaps most to the point, South Dakota was successful in passing a bill that completely prohibited private-to-private eminent domain transfers.

In more recent developments, the Institute for Justice reports that Texas passed a unanimous bill through both houses only to have it significantly weakened in a joint committee. The bill proposed what would have been one of

C-

Grade point average for all 50 U.S. states, according to the *50 State Report Card; Tracking Eminent Domain Reform Legislation*.

the strictest constitutional amendments currently in place in any state today. However, the changes made in committee opened a loophole for the government to grant eminent domain usage to any private entity. Although the legislation still takes a stand on “bogus” blight determinations, it remains to be seen whether the constitutional amendment will invoke meaningful change in Texas eminent domain law. ||

LEARN MORE ABOUT EMINENT DOMAIN

If you are interested in learning more about eminent domain law and how your state ranks, visit www.ij.org to check-out the *50 State Report Card; Tracking Eminent Domain Reform Legislation since Kelo*, as well as several other eminent domain and private property rights publications. In addition, ALEC’s Natural Resources Task Force will further address this issue at the 36th Annual Meeting in Atlanta, Georgia.



Kimball Rasmussen, CEO of Deseret Power, discusses climate change with ALEC members.

UPDATE

Spring Task Force Summit



Idaho legislators gather in Memphis for ALEC's Spring Task Force Summit. From the left, Rep. Jim Clark, Rep. Jim Patrick, Sen. Patti Anne Lodge, Rep. Ken Roberts, Rep. Janice McGeachin, Rep. Phil Hart.

ALEC's Spring Task Force Summit in Memphis, Tenn., on May 1-2, was tremendously successful and one of the best attended spring meetings ALEC has ever had.

ALEC members approved the bills on page 5 as new Model Legislation. Summaries follow and the full text of each is available to ALEC members at www.alec.org.



Tennessee Legislators gather at ALEC's Spring Task Force Summit in Memphis. From left; Rep. Phillip Johnson, Rep. Donna Rowland, U.S. Congressman Marsha Blackburn, Rep. Debra Maggart, Sen. Paul Stanley, Rep. Beth Harwell, and Rep. Frank Nicely.

ALEC would like to thank all of our members and sponsors for making the 2009 Spring Task Force Summit such a successful event.

CIVIL JUSTICE TASK FORCE

Amy Kjose, Task Force Director

Honesty in Lawyering Act

This act would increase disclosure between attorneys and clients, subject attorneys to the state's consumer protection statute, require independent audits of fiduciary and escrow accounts that lawyers maintain to hold funds for clients when those accounts have collective deposits in excess of \$1,000,000 during a calendar year in order to catch illegal acts earlier, and require disclosure of relationships between attorneys and those judges and jurors involved in the case, as well as relations between the attorney and any other body with an interest in the outcome of the case.

Model Rules Governing Discovery of Electronically Stored Information and Limitations on Waiver of Attorney-Client Privilege and Work Product

These model rules would reduce unexpected and unnecessary discovery costs and burdens by updating discovery definitions, ensuring that requested information is relevant and reasonably accessible, allowing sanctions in the case of intentional or reckless violation, allowing flexibility in production form, and creating consistent standards for protection against the waiver of attorney-client privilege.

EDUCATION TASK FORCE

J. William Reed, Task Force Director

Parental Choice Scholarship Accountability Act

This bill creates administrative, fiscal and academic accountability standards to be used in conjunction with elementary or secondary publicly-created private school scholarship programs.

Parental Choice Scholarship Tax Credit Accountability Act

This bill creates administrative, fiscal and academic accountability standards to be used in conjunction with elementary or secondary private school scholarship tax credit programs.

TAX AND FISCAL POLICY TASK FORCE

Jonathan Williams, Task Force Director

Promoting Transparency in State Unfunded Liabilities

This model legislation is intended to help make information as open, transparent and publicly accessible as possible. Increasing the ease of public access to this information increases governmental accountability, public participation and the understanding of the cost of government services.

HEALTH AND HUMAN SERVICES TASK FORCE

Christie Herrera, Task Force Director

Patient's Right To Know Act

This model bill provides health care consumers with better information on the cost of their medical care and introduces elements of competition into the marketplace.

Resolution on Preserving States' Rights Regarding Federal Health Insurance Exchanges and a Public Plan

This resolution urges Congress not to institute new federal review, oversight or preemption of state health insurance laws as Congress considers health care reform.

Resolution on Certificate of Need Laws Required for the Establishment of Certain Health Care Services

This resolution opposes the establishment or expansion of government-imposed barriers to health care access such as Certificate of Need (CON) laws, and further urges the repeal of existing CON laws.

PUBLIC SAFETY AND ELECTIONS TASK FORCE

Michael Hough, Task Force Director

Underage Drinking House Parties Act

This bill holds adults responsible for underage drinking house parties by establishing penalties for any adult who either makes alcohol available to persons under the age of 21 or who allows persons under the age of 21 to consume alcohol on the premises of property under the adult's control.

Model State Bill Prohibiting Wireless Handsets in Prisons

This model bill makes it unlawful for prisoners to bring wireless handsets into prisons; establishing a criminal offense and corresponding penalties.

Resolution Supporting Citizen Involvement in Elections

This resolution strengthens citizen involvement in political campaigns by opposing contribution limits to political campaigns. Using research by the Center for Competitive Politics, as well as the reasoning used by *Governing* magazine on state corruption and legal decisions, this resolution resolves that contribution limits are ineffective and limit First Amendment rights. Additionally, next to voting itself, contributing to political efforts is the most common way for citizens to engage in the political process. ||

Find out more at www.alec.org



TOP 10 Beach Reads on ObamaCare

BY CHRISTIE HERRERA AND DAVID J. MYSLINSKI

While you're relaxing at the beach this summer, be sure to put on a liberal amount of sunscreen – you won't be able to afford skin cancer under any health reform plan that's currently in the news.

Early reports indicate that federal health reform legislation will include an individual mandate to purchase health insurance (similar to the failed Massachusetts experiment); a mandate requiring businesses to provide health coverage for their workers (a “pay or play” requirement); a new so-called “public plan” and “national health insurance exchange” that will squeeze out private-sector health options; and an aggressive “comparative effectiveness research” agenda that has the potential to restrict costly drugs and medical procedures.

It's no surprise that the prospects for federal-level, free-market health reform are melting like a popsicle on a hot summer day. As federal lawmakers bandy about with different health reform plans, state legislators need sound policy analysis, anecdotes and statistics to fight for patient-centered solutions.

Luckily, ALEC's coalition partners have published some great material that you can use in your next floor speech, op-ed or constituent town hall meeting. So here are the top 10 “beach reads” on what you might expect from the Obama administration and Congress.

1 **Obamacare to Come: Seven Bad Ideas for Health Care Reform** By Michael D. Tanner

Cato Institute Policy Analysis No. 638

www.cato.org/pub_display.php?pub_id=10218

This report gives a comprehensive review of several key principles contained in President Obama's health care reform proposal, including the employer mandate, the individual mandate, the “public option,” comparative effectiveness research, community rating and guaranteed issue, subsidies and health IT.

2 **The Obama Health Care Plan: More Power to Washington** By Robert E. Moffit, Ph.D. and Nina Owcharenko

The Heritage Foundation Backgrounder No. 2197

www.heritage.org/research/HealthCare/bg2197.cfm

Written while he was still candidate Obama, this paper dissects the policies President Obama was pushing before he won the election. While his current policies mirror his campaign rhetoric, Obama is now much more open to an individual mandate.

3 **Health Care Reform: Do Other Countries Have the Answers?** By John C. Goodman, Linda Gorman, Devon Herrick and Robert M. Sade

National Center for Policy Analysis

www.ncpa.org/pdfs/sp_Do_Other_Countries_Have_the_Answers.pdf

While we have all heard other countries are giving better results at a lower cost, how much of this is fact? This report disputes those claims and cites examples of what we can do to further improve our own health care sector.

4 **The Grass Is Not Always Greener: A Look at National Health Care Systems Around the World** By Michael D. Tanner

Cato Institute Policy Analysis No. 613

www.cato.org/pub_display.php?pub_id=9272

Critics of the U.S. health care system frequently point to other countries as models for reform. They point out that many countries spend far less on health care than the United States yet seem to enjoy better health outcomes. However, overall trends suggest that countries with more effective national health care systems are only successful to the degree that they incorporate market mechanisms such as competition, cost sharing, market prices and consumer choice, and eschew centralized government control.

Christie Herrera is the Director of the Health and Human Services Task Force at the American Legislative Exchange Council. David J. Myslinski is the Legislative Assistant to the Education and Health and Human Services Task Forces.

5 Taxing Health Insurance: A Tax Designed to Be Avoided
By Robert B. Helms

American Enterprise Institute Health Policy Outlook No. 7
www.aei.org/outlook/100046

First enacted due to World War II wage and price controls, the health insurance tax exclusion has grown into a behemoth that no one could have predicted. But capping the value of employer-provided health insurance is not without controversy, even within the Obama administration. This paper suggests why capping the tax exclusion would encourage employers to offer more cost-effective health insurance plans, and why lifting or capping the tax exclusion is one of Congress's few options for finding money for health reform.

6 Does Barack Obama Support Socialized Medicine?
By Michael F. Cannon

Cato Institute Briefing Paper No. 108
www.cato.org/pub_display.php?pub_id=9679

Written just prior to the 2008 election, this paper explains why supporters of universal coverage have been hard at work to neutralize the epithet “socialized medicine” and suggests that all attempts at universal coverage would socialize medicine even further.

7 The Folly of Health Insurance Mandates
By Devon Herrick

National Center for Policy Analysis Brief Analysis No. 652
www.ncpa.org/pub/ba652

Originally against individual mandates, President Obama has added them to his arsenal in the fight for health care reform. Both individual and employer mandates put an undue burden on an already struggling economy. This analysis shows how mandates are anti-business and anti-freedom.

8 The Obama Health Agenda: Impact on the States
By Dennis G. Smith

The Heritage Foundation WebMemo No. 2445
www.heritage.org/Research/HealthCare/wm2445.cfm

This paper highlights why the President's proposal for a Medicaid expansion and a public program expansion would undermine state financing and threaten state flexibility.

9 Massachusetts Miracle or Massachusetts Miserable: What the Failure of the “Massachusetts Model” Tells Us about Health Care Reform

By Michael D. Tanner

Cato Institute Briefing Paper No. 112
www.cato.org/pub_display.php?pub_id=10268

Several ideas in President Obama's health plan have been in place for years in Massachusetts. This paper reviews what's happened in Massachusetts and what we should learn from the Bay State when trying to reform our nation's health care sector.

10 Why a New Public Plan Will Not Improve American Health Care

By Walton J. Francis

The Heritage Foundation Backgrounder No. 2267
www.heritage.org/Research/HealthCare/bg2267.cfm

Possibly the most polarizing part of ObamaCare, a “public plan” could be created to compete – fairly or unfairly – with private health insurance plans. This paper illuminates the flaws in such a plan, and says that the real reason why a number of health policy analysts and politicians favor a public plan is because they see it as a way to crowd out private health care options, paving the way to a single-payer system.

FOR YOUR iPod

“The Five (Not So) Easy Pieces of Health Reform”

American Enterprise Institute Conference
June 4, 2009
www.aei.org/audio/100486

This all-day event covers the five core elements within Obama's health reform plan: mandates for universal coverage, a national health insurance exchange, the public plan, increased taxes, and limits on the future scope and scale of medical treatment options.

“Health Care University: Which Reforms Are Better—or Worse—than Doing Nothing?”

Four Cato Institute Seminars on the Hill
April 14-17, 2009
www.cato.org/events/hcu09/program.html

These four seminars, designed for Capitol Hill staffers, are titled “Line in the Sand #1: No Public Plan,” “Line in the Sand #2: No Mandates,” “Line in the Sand #3: No Price Controls” and “Yes, Mr. President: Markets Can Fix Health Care.”

“Obama Health Plan”

National Center for Policy Analysis Debate
Dec. 11, 2008
www.ncpa.org/pub/obama-health-plan
NCPA President John Goodman debates U.S. Department of Health and Human Services Office of Health Reform Director Jeanne Lambrew on the pros and cons of various health care reform options.

Europe on the "Right" Track

What America can Learn from Europe's Recent Elections

BY BRIAN GOMEZ and JONATHAN MOODY



After years of growing government and regulation in Europe, the results of the latest European parliamentary elections serve as a breath of fresh air. Victories for conservatives in nearly every single European country indicate voters are beginning to lose trust in leftist solutions.

Following four days of voting in 27 countries, the results of the June election deciding the new members of the European Union's Parliament are clear. Votes across the European map show a strong win for the center-right and collapsing support for the center-left. Overall, the center-right European People's Party (EPP) has retained its place as the largest grouping, securing 264 seats out of 736, while the Socialist Group in the European Parliament (PES) received only 161. Right-leaning parties came out ahead in Germany, France, Italy, Britain, Spain, Bulgaria, Austria, Belgium, the Netherlands and Hungary. In fact, only in Greece and Slovakia did the left manage to win by small margins. These two countries are now the last bastions of a declining ideology in Europe.

264

Number of seats secured in the 736-seat EU Parliament, by the center-right European People's Party

Furthermore, we are witnessing an interesting development in party-politics in Europe with the rise of new groups of conservative political parties such as the European Conservatives and Reformists (ECR). British Conservative Member of the European Parliament (MEP), Dr. Syed Kamall, is excited about this new coalition, which will be the fourth largest, with 55 Members from eight countries. He contends, "This is a milestone for European politics; finally, a center-right group has been formed that aims to move power from Brussels back to national parliaments and individuals where it belongs."

So why the collapse in support for the left in a continent where the welfare state has become the standard? Graham Watson, leader of another EU center-right grouping, predicted that the results of this election would represent a rejection of the Socialist approach. "People don't want a return to socialism and that's why the majority here will be a center-right majority," he said. As the final results show, he was right.

Many left-leaning candidates ran campaigns that criticized center-right leaders for failing to regulate financial markets or spend enough to stimulate faltering economies. But voters did not embrace their cause. Instead, European voters opted for center-right candidates who campaigned on conservative solutions to the economic crisis rather than continuing down the path of taxpayer-financed stimulus and corporate bail-

outs. EPP's leader, Joseph Daul, said his group of center-right national parties would support a plan ensuring no new money would be allocated to stimulus.

Europe's tradition of democratic socialism has made it the testing ground for leftist policies in the modern era. However, the shift in the political atmosphere seen in the June European elections would suggest that big government is not the solution. Europe's declining economic growth for the past five decades further supports this thesis. In the 1950s, the average economic growth of western European economies was 5.8 percent. Since then, it has fallen every decade until it reached 1.7 percent at the start of the 21st century. Now, amidst a global recession, the EU economy has a negative percentage growth. Are we witnessing the final days of European Socialism?

Whatever the potential implications of the June European elections may be, one thing is clear: the United States appears to be on track to merge onto the very road that Europe is looking to abandon. As the United States is beginning to look to increased regulation of markets, large stimulus packages, centralization of government and corporate bailouts as solutions, we ought to ask how such policies worked for our friends across the Atlantic. Through the recent election results, the answer seems to be quite clear – not very well. ||

Brian Gomez is a Research and Operations Assistant for the American Legislative Exchange Council and a student at the University of Virginia. Jonathan Moody is the Policy Coordinator and Elections and Ethics Subcommittee Manager for the American Legislative Exchange Council.



Arizona Poised to Block Single-Payer Health Care

Constitutional Amendment will Secure Patient's Right to Stop Individual Mandate

BY CHRISTIE HERRERA

I commend House Concurrent Resolution 2014, which would protect the rights of Arizonans to make their own health care choices. HCR 2014 is modeled after ALEC's model legislation, the *Freedom of Choice in Health Care Act*. Five other states – Minnesota, New Mexico, North Dakota, Wisconsin and Wyoming – have introduced legislation similar to HCR 2014.

Preserving Private Health Coverage Choices

It's no surprise that the biggest issue facing Arizona is access to affordable, meaningful health coverage. More than 1.2 million Arizonans, or nearly one in five, are uninsured. This statistic dwarfs the national average, and ranks Arizona as the state with the sixth-highest percentage of uninsured citizens.¹

But like most states, Arizona's uninsured population is very diverse. A growing number of the uninsured lack

access to employer-sponsored coverage; are eligible, but not enrolled, in Medicaid or SCHIP; or are denied coverage due to costly chronic diseases. Others don't choose to buy insurance because it isn't a good "deal" for them. Nationally, more than nine million Americans have incomes above \$75,000 but still don't have coverage.²

Despite Arizona's diverse uninsured population, some lawmakers seek to solve this problem with a coercive, one-size-fits-all universal coverage system

that limits health choices. What's worse, most universal coverage schemes aren't "universal" unless they prevent citizens from obtaining private coverage, or from choosing coverage options not allowed by the government.

By prohibiting a government-run, universal health system – in which residents would be forced to enroll – HCR 2014 will help Arizona's uninsured maintain access to a broad and vibrant array of private sector health plan choices. Arizona's diverse uninsured popula-

Christie Herrera is the Director of the Health and Human Services Task Force at the American Legislative Exchange Council.

tion deserves a diverse set of solutions.

Securing Access to Health Services and Protect the Doctor-Patient Relationship

As in other sectors of our economy, when consumers control the dollars, they make the decisions. To this end, HCR 2014 will block legislation that restricts freedom of choice of a private health plan, and it will also block legislation that interferes with a person's right to pay directly for lawful medical services. These provisions will not only preserve the rights of individuals to make their own health care choices, but they will also allow patients to maintain access to health services.

HCR 2014 is critical in ensuring that Arizonans retain the right to choose their own private health plan. That's because some lawmakers want to enact legislation that would require every Arizonan to enroll in a government-run, government-funded health care plan with a rich benefits package and weak cost-sharing requirements. The resulting overutilization of health services – and skyrocketing spending – will likely force this single-payer scheme to ration care as a cost-containment measure.

Most countries that provide universal health coverage deny critical procedures to patients who need them. Britain's National Health Service has reported that, at any given time, nearly 900,000 Britons are waiting for admission to National Health Service hospitals, and shortages force the cancellation of more than 50,000 operations each year. In Sweden, the wait for heart surgery can be as long as 25 weeks, and the average wait for hip replacement surgery is more than a year. Many of these individuals suffer chronic pain, and some will probably die awaiting treatment.³

By blocking an onerous universal coverage scheme, HCR 2014 will pre-

vent Arizonans from being enrolled in a single-payer health system that will simultaneously pay for everyone's health care and limit access to it. After all, access to a waiting list is not access to health care.

HCR 2014 also protects the doctor-patient relationship by ensuring a person's right to pay directly for lawful medical services. Single-payer systems, like in Canada, make it illegal for citizens to go outside the government's health care plan and contract for their own medical services. Cost overruns require most single-payer plans to restrict patient choices, and instead mandate an "evidence-based" treatment schedule that standardizes care and requires provider compliance with government medical decisions.

The problem with government-dictated, "evidence-based" medical care is that no two patients are alike. In other words, guidelines can tell doctors what is best for patients overall, but those population-based recommendations are often inappropriate for individual patients. Health care is a very personal matter – and as such, doctors should decide the best course of medical treatment. Similarly, patients – not government officials – should decide which doctor to see, what treatments to get, and whether or not to get a second or third opinion.⁴

Simply put, when governments – rather than consumers – pay the bill, politically-motivated and budget-conscious bureaucrats decide which drugs, tests and procedures patients can access. If HCR 2014 is enacted, the right of people to make their own health care choices would be guaranteed by the Arizona Constitution.

Saving State Dollars from Costly Universal Coverage

By blocking costly universal coverage proposals, HCR 2014 will save Arizo-

nans from crippling health-related tax hikes and budget cuts.

In particular, Arizona policymakers should heed the cautionary tale of Wisconsin, which in 2007 proposed – and rejected – a single-payer health plan for its citizens.⁵ The Wisconsin plan would have required all citizens to drop their private health coverage and instead enroll in a state-administered plan with comprehensive benefits and capped out-of-pocket expenses.

In order to pay for the Wisconsin single-payer plan, all employers would have been required to pay the state between nine and 12 percent of Social Security wages, or about \$340 per month, per worker. Similarly, individuals would have been required to pay the state four percent of Social Security wages, or about \$140 per month. Self-employed persons, and persons with income but no wages – like retirees – would have been required to pay the state 10 percent of their income.

Uncompromisingly, the Wisconsin single-payer plan would have bankrupted that state and resulted in massive tax increases. According to the Tax Foundation:⁶

- Financing the plan would have meant a \$15.2 billion dollar tax increase – the largest tax increase ever enacted by any state.
- At the time, Wisconsin's tax burden was the seventh-highest in the country. The 14.5 percent payroll tax would have bumped Wisconsin to number one – bringing the state tax burden to 20 percent of income.
- Enacting the plan would have represented the first time any state has voted to double its tax collections in a single year.
- Enacting the plan would have represented the first time any state has

passed a tax increase equivalent to 50 percent of general revenues.

- Enacting the plan would have represented the first time any state has passed a tax increase equal to six percent of its GDP – more than 13 times bigger than any state other state tax increase, ever.
- Weak cost-sharing and a rich benefits package would have made the plan more expensive every year – and the plan would have comprised nearly 40 percent of Wisconsin's budget in the first year alone.

With a budget deficit projected to be as high as \$3.3 billion,⁷ Arizona simply can not afford the high taxes and spending that come with any single-payer health plan. HCR 2014 will protect Arizona's taxpayers from costly, free-in-name-only universal coverage.

Guarding Against Intrusive Mandates That Don't Work

HCR 2014 would block legislation that imposes costly, bureaucratic penalties for choosing to obtain or decline health coverage. This provision strikes at the heart of individual and employer mandates – implemented in Massachusetts and elsewhere – that penalize individuals and businesses for failing to purchase health insurance.

The Massachusetts example⁸ is particularly instructive for Arizona and other states facing onerous individual and employer mandates. As of July 1, 2007, every Massachusetts resident was required to have health insurance – either through their employers, through Medicaid/Medicare or by purchasing it on the individual market. Every Massachusetts taxpayer must indicate on his state income tax return that he, and his dependents, had health insurance during the previous year, with no lapse lon-

ger than 63 days. Failure to comply results in a penalty equal to 50 percent of the lowest-cost insurance policy available for each month without coverage, or about \$912 per year.

Similarly, the Massachusetts mandate requires employers with more than 11 workers to pay a \$295 “fair share” contribution to the state if they do not make a contribution to their workers' health insurance that is “fair and reasonable” (which is also determined by the state). Businesses that do not comply face a “free rider surcharge” if Massachusetts pays more than \$50,000 for care provided to that company's employees.

Two years into the mandate, Massachusetts still hasn't achieved 100 percent coverage – in fact, more than 200,000 remain uninsured.⁹ Many of the uninsured were exempt from the mandate because coverage was too expensive. Over half of those who did get insurance got fully- or partially-subsidized coverage, courtesy of Massachusetts taxpayers.¹⁰

Why has the Massachusetts mandate been proven ineffective? Primarily, it's because compliance is futile. For example, mandating health insurance is often compared to mandating car insurance. But states that mandate car insurance typically still have 15 percent of their drivers uninsured – the same percentage as states that don't mandate car insurance.¹¹ Similarly, in 1974, Hawaii became the first state that required employers to provide health insurance for their workers. More than 30 years later, Hawaii's uninsured rate still hovers at 10 percent. Many Hawaiian employers escaped the mandate by shifting work to exempt part-time employees.

Enforcement issues also abound. Using state income tax filings for enforcement will make it hard to track down the indigent, the elderly, immigrants, the homeless, the mentally-ill, (and even some state legislators) who don't file state income tax returns. And

the weak penalties associated with a Massachusetts-style mandate are often cheaper than purchasing coverage. Last April, PBS profiled one Massachusetts resident, a \$40,000-a-year teacher who said, “I don't have a problem with mandating that everyone be covered. I do have a problem with mandating that people be covered by products that are unaffordable.” The cheapest plan he could buy cost \$3,500 per year; instead, he just chose to pay the cheaper penalty.¹²

Simply put, HCR 2014 would protect against intrusive individual and employer mandates that just don't work.

Compatible Reforms

Just as HCR 2014 will prevent a coercive, one-size-fits-all universal coverage system, Arizona's legislators must work on a diverse, targeted set of policy solutions to cover the uninsured. Some reforms that will advance this goal, along with HCR 2014, are:

Allowing Consumers to Purchase Health Insurance Across State Lines

Increasing numbers of Arizonans uninsured don't choose to purchase coverage because it just isn't a good deal for them. Allowing these “voluntarily uninsured” to purchase health insurance in other states – as they do books, clothes, cars and other products – will empower uninsured Arizonans to access more health plans at lower prices, while expanding coverage choices for those who are already insured. This ALEC model legislation – the *Health Care Choice Act for States* – will also allow Arizonans who want more extensive benefits to “top up” for richer coverage in other states.

In addition to bringing greater choices and access to health insurance, this policy will also allow Arizona to benefit from innovative plans in other states. Cross-border purchasing of health insurance will cause pressure to create a

more competitive Arizona health insurance market. It will bring about quicker access to innovative plans because insurers would face fewer “barriers to entry” into Arizona. In other words, Arizona could benefit from new ideas in other states, while maintaining core consumer and licensing protections important to Arizonans.

Extending Tax Breaks to Individuals, Businesses and Insurers Who Purchase HSAs

Health Savings Accounts (HSAs) are becoming an important tool to cover the uninsured. Since its inception in 2003, eight million Americans own an HSA, which is a tax-free medical savings account coupled with a high-deductible health policy. Nearly 150,000 Arizonans, or about five percent of those with private insurance, own an HSA.¹³

Critics of HSAs claim that this consumer-driven insurance tool is primarily for the young and healthy. However, nearly half of HSA owners are over the age of 40, and one in four HSA owners is aged 50 or older.¹⁴ A large health in-

surance broker reports that, of its customers, 41 percent of HSA owners were previously uninsured, and nearly half of HSA plan purchasers have incomes of \$50,000 or less.¹⁵ And roughly the same percentage of individuals with HSA coverage consider themselves to be in “fair/poor health” as those with non-HSA coverage – meaning that patients with chronic illnesses are also choosing high-deductible plans.¹⁶ In fact, the BlueCross BlueShield Association reports that HSA owners are offered more wellness incentives, are more likely to use preventive care and typically do not forgo needed care because of costs.¹⁷

A new ALEC model – the *Affordable Health Insurance Act* – is modeled after a successful Georgia reform that increases access to HSAs. To make insurance more affordable, the bill eliminates all state and local “sales taxes,” or premium taxes, on HSA-eligible plans; incentivizes small businesses to offer insurance by granting them a \$250 tax credit for each employee enrolled in an HSA eligible plan; and gives individual insurance buyers an income tax deduction for the

premium associated with the purchase of an HSA-eligible plan.

Conclusion

With hard economic times and tightening state budgets, Arizona simply cannot afford to limit access to health insurance for its uninsured families. House Concurrent Resolution 2014 is common-sense legislation that will preserve freedom of choice for health care consumers, and ensure that patients in need have the widest possible variety of medical options. ||

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

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Utilizing Virtual Learning

ALEC Member Co-authors Book on Virtual Schooling

BY DAVID J. MYSLINSKI

What if millions of students across the United States were given instant access to exciting subjects, innovative technologies and burgeoning industries from around the world? Imagine the profound effect it would have on the training and skills of our future leaders.

Unfortunately, our citizens of tomorrow are burdened by the problems of today. The troubled economy has school districts across the country cutting programs or increasing class sizes. The cost of a private school is out of reach for even more families. Not surprising, America's K-12 global academic standing continues to decline. As these issues pose further questions for parents, educators, and legislators alike, a popular answer in the educational field is emerging: virtual schooling.

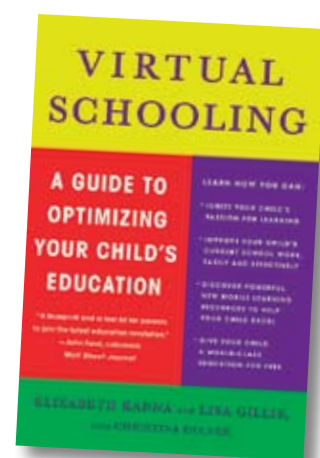
Today, more than one million students have discovered this option and are now learning outside the traditional classroom. Policy experts predict that within a decade, half of all education will be delivered in a virtual format. From hybrid schools, which combine the virtual and classroom experiences, to full-time virtual schools and unique opportunities like learning science from a Nobel Laureate, virtual schooling is exploding and thus becoming a powerful educational approach.

According to the International Association for K-12 Online Learning, virtual schooling is a new field that is growing at an estimated pace of 30 percent annually. In January 2007, there

were 173 virtual charter schools serving more than 92,235 students in 18 states. Forty-two states have significant supplemental or full-time online learning programs, and there are 34 state-wide or state-led virtual schools across the country.

As an organization working with its members to introduce and expand such virtual learning opportunities in the states, ALEC is proud to announce that Lisa Gillis, Private Sector Chairman of the Education Task Force's Special Needs Subcommittee, recently released a revolutionary road map that can help in this critical effort. *Virtual Schooling: A Guide to Optimizing Your Child's Education*, for which Gillis served as co-author, assists those interested in this cutting-edge education movement to learn more about how they can:

- Ignite their child's passion and remove common roadblocks to learning by creating individualized learning plans;
- Seek out the programs and learning opportunities that will optimize their child's strengths;
- Save thousands of dollars on their child's college education;



- Prepare their child for success in the workplace in any future economy.

As a lifelong educator, Gillis has spent her career teaching, administrating, writing policy, advocating in the public sector and working with educational agencies to design programs to meet the needs of a diverse range of students. In addition to her duties on ALEC's Education Task Force, Gillis is the Director of Government Affairs and School Development for Insight Schools, Inc., a national leader in online public high schools. Understanding the need to promote the powerful combination of access and advocacy is what drove Gillis and her co-authors, Elizabeth Kanna and Christina Culver, to pen this revolutionary tool.

Through online schooling, students can have affordable access to knowledge from virtually – no pun intended – every corner of the earth. And for parents wanting nothing but the world for their kids – and for state leaders preparing for an ever-changing global economy – their answer could be but a click, or read, away. ||

FIND OUT MORE ABOUT VIRTUAL SCHOOLING

If you are interested in virtual schooling and Gillis's newly released book, contact J. William Reed, Director of the Education Task Force, at reed@alec.org. Also, visit ALEC's Web site – www.alec.org – for model legislation on virtual learning.

David J. Myslinski is the Legislative Assistant to the Education and Health and Human Services Task Forces.

Parents, Kids & Policymakers in the Digital Age

Safeguarding Against "Techno-Panics"

BY ADAM THIERER

A cursory review of the history of media and communications technologies reveals a reoccurring cycle of “techno-panics” – public and political crusades against the use of new media or technologies by the young. From the waltz to rock-and-roll to rap music, from movies to comic books to video games, from radio and television to the Internet and social networking Web sites, every new media format or technology has spawned a fresh debate about the potential negative effects they might have on kids.

Inevitably, fueled by media sensationalism and various activist groups, these social and cultural debates quickly become political debates. Indeed, each of the media technologies or outlets mentioned above was either regulated or threatened with regulation at some point in its history. And the cycle continues today. During recent sessions

of Congress, countless hearings were held and bills introduced on a wide variety of media and content-related issues. These proposals dealt with broadcast television and radio programming, cable and satellite television content, video games, the Internet, social networking sites and much more. State policymakers, especially state attorneys

general (AGs), also have joined in such crusades on occasion. The recent push by AGs for mandatory age verification for all social networking sites is merely the latest example.

What is perhaps most ironic about these techno-panics is how quickly yesterday’s boogeyman becomes tomorrow’s accepted medium, even as



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the new villains replace old ones. For example, the children of the 1950s and '60s were told that Elvis's hip shakes and the rock-and-roll revolution would make them all the tools of the devil. They grew up fine and became parents themselves, but then promptly began criticizing rap music and video games in the '80s and '90s. And now those aging Pac Man-era parents are worried sick about their kids being abducted by predators lurking on MySpace and Facebook. We shouldn't be surprised if, a decade or two from now, today's Internet generation will be decrying the dangers of virtual reality.

These techno-panics are almost always disproportionate to the real risk posed by new media and technology, which typically do not have the corrupting influence on youth that older generations fear. Parents and public policymakers alike need to remember they were once kids, too, and managed to live through many of the same fears and concerns about media and popular culture. As the late University of North Carolina journalism professor Margaret A. Blanchard once noted: "[P]arents and grandparents who lead the efforts to cleanse today's society seem to forget that they survived alleged attacks on their morals by different media when they were children. Each generation's adults either lose faith in the ability of their young people to do the same or they become convinced that the dangers facing the new generation are much more substantial than the ones they faced as children." And Thomas Hine, author of *The Rise and Fall of the American Teenager*, argues that: "We seem to have moved, without skipping a beat, from blaming our parents for the ills of society to blaming our children. We want them to embody virtues we only rarely practice. We want them to eschew habits we've never managed to break."



From Elvis to video games, parents and policymakers need to engage kids in an on-going conversation.

The better response by both parents and policymakers is a measured and balanced approach to children's exposure to media content and online interactions. All-or-nothing extremes are never going to work. In particular, techno-panics are hopelessly counter-productive. "Fear, in many cases, is leading to overreaction, which in turn could give rise to greater problems as young people take detours around the roadblocks we think we are erecting," argue John Palfrey and Urs Gasser, authors of *Born Digital: Understanding the First Generation of Digital Natives*. What parents, educators and policymakers need to understand, they argue, "is that the traditional values and common sense that have served them well in the past will be relevant in this new world, too."

Most simply, we need to be willing to talk to our kids about the new technologies and cultural developments that shape their generation. When we as parents (or policymakers) do not fully comprehend or appreciate the new-fangled gadget in our kids' pocket – or whatever they are playing, watching or listening to on it – instead of engaging in

demagoguery and driving a wedge between us and them, we should instead invite them to have a conversation with us about it. Ask three simple questions to get that conversation started: "What is this new thing all about?" "Tell me how you use it." "Why is it important to you?" Once you've got them talking to you, good ole' fashioned common sense and timeless parenting principles should kick in. "Do you understand why too much of this might be bad for you?" "Will you please come talk to me if you don't understand something you've seen or heard?" And so on.

In sum, it's about parental responsibility and rational, measured responses. The techno-panic mentality, by contrast, creates distrust and distance between our kids and us. As Anne Collier of Net Family News notes, techno-panics "cause fear, which interferes with parent-child communication, which in turn puts kids at greater risk."

Parents and policymakers need to engage kids in an ongoing conversation about the technologies *du jour* – even when we don't fully understand or appreciate them. ||

Integrity in Elections

Proactively Combating Voter Fraud in the States

BY ANDY JONES AND JONATHAN MOODY

The action of voting is the foundation of our republic. Yet, in a nation viewed as a model for democracies everywhere, the voting system in the United States continues to be undercut by voter fraud and efforts to circumvent our constitutional election processes. In order to preserve a strong election system, we must be aware of, and proactive against serious threats designed to undermine the integrity of the most important element of our system of government.

Our system of voting continues to be weakened by the threat of voter fraud. One form of fraud that has been frequently documented, especially in the months prior to the 2008 election, is voter-registration fraud. A few memorable cases stand out. In Nevada, for example, authorities seized records from the community group ACORN, accused of submitting fraudulent voter-registration forms. Voters that this group attempted to register included football stars Tony Romo and Terrell Owens, along with the rest of the starting lineup for the Dallas Cowboys. Also in 2008, Florida officials flagged a voter registration application from "Mickey Mouse," one of hundreds pulled because they were incomplete, duplicates or just plain fake.

Recently in Washington state, seven ACORN employees were convicted of voter registration fraud. These seven employees had turned in more than 1,800 phony voter-registration forms before they were caught. Similar charges were brought against others in Pennsylvania, Missouri, Ohio, Michigan, Kansas, Connecticut and other states. In all, more than 14 states have ongoing investigations of voter fraud.

Those are just the fraudulent actions

we know of. Across the United States, it is estimated that about 25 percent of voter-registration forms are duplicates, and around 1 percent of the forms are bogus, containing fictitious names or addresses.

Although the evidence of voter registration fraud is more clearly apparent, voter impersonation fraud is just as simply a threat to the system.

In more than 26 states, voting does not require any form of official identification, much less a government-issued or photo ID. Some of these states require only a voter's name, address and signature to vote, while others may only require name and signature. Stronger ID efforts can curb voter identification fraud that stems from loose identification standards at the polls.

Though the incentive is clearly present for people to commit voter ID fraud, it is inherently difficult to catch. As Hans A. von Spakovsky, a former Federal Election Commissioner explained, "It is true that evidence of such fraud is hard to come by, but this is for a simple reason: Election officials cannot discover an impersonation if they are denied the very tool needed to detect it – an identification requirement."

It is quite clear that our system is vulnerable to voter-registration fraud and, despite some claims to the contrary, voter fraud. As such, both are clearly important issues. Voter-registration fraud and voter-impersonation fraud threaten the integrity of this essential function of democracy. We have seen that such fraud can and does effect elections. In 2001, *The Palm Beach Post* reported that "more than 5,600 people who voted in the 2000 Florida presidential election had names and data that perfectly matched a statewide list of suspected felons who were barred from voting." As we know, Florida was ultimately decided by about 500 votes.

Some states have taken proactive steps to address the problem of voter fraud. One of the most prominent examples – thanks in part to a recent and highly publicized Supreme Court case – is Indiana. Voters in Indiana are required to produce a government-issued photo ID to vote. Sen. Jim Buck, ALEC's Indiana State Co-Chair, praises the law in maintaining the integrity of elections. He emphasizes, "Securing our identity at the polls, in an era of identity theft, has been enhanced by our voter ID law. All freedom loving people want and de-

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pend on accurate elections for confident results. The overwhelming majority of voters in Indiana appreciate and understand the need for this new law.”

In Georgia, in an effort to implement a key provision of the *Help America Vote Act of 2002*, the accuracy of information voters report on their registration forms is compared with state drivers licenses and Social Security records for accuracy. As von Spakovsky describes, under the program “anyone flagged as a potential noncitizen would still be registered if [he or she] could confirm to local election officials that he was indeed a citizen. Georgia sent letters to over 4,000 potential noncitizens. More than 2,000 failed to confirm their citizenship, strong evidence that noncitizens were prevented from illegally registering and voting.”

Arizona not only requires that voters provide government-issued ID to vote, but also, uniquely, that proof of citizenship be established when registering. ALEC member Sen. Russell Pearce was the author of this reform, which was passed in 2004 as Arizona's *Citizens and Taxpayers Protection Act* or *Prop. 200*.

Sen. Pearce contends, “the U.S. Constitution established more than 200 years ago that only citizens may vote. With

groups like ACORN being investigated in more than a dozen states for voter fraud, requiring proof of citizenship to register is critical. Arizona's law requiring proof of citizenship has been upheld in seven different court challenges and by the U.S. Justice Department. The law requires everyone to prove their eligibility to vote, with no exceptions. The *Help America Vote Act of 2002* requires states to strengthen the integrity of their voter rolls, as does Title 7, Section 12, of the Arizona Constitution.

He continues by saying, “requiring photo ID at the polls is also important to prevent fraud at the other end of the process. Valid proof of identification is required to cash a check, apply for welfare, sign a lease, or get a rental card at a video store – certainly voting is more important.”

Mr. von Spakovsky helps to put the issue in a broader perspective, explaining, “voters in nearly 100 democracies are required to present photo identification to ensure the integrity of elections. Our southern neighbor, Mexico, requires both a photo ID and a thumbprint” to vote. Even Iraq, a struggling new democracy, requires voters to dip their fingers in ink after voting – an at-

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Number of states that do not require official identification to vote.

tempt to insure the fairness of elections by keeping track of voters. If Mexico can implement a successful voter ID requirement and if nations like Iraq are making some attempt to track the identity of voters, there is no valid reason the United States cannot do the same.

It is vitally important to protect the integrity of our voting system in the United States and such protection must come from the state level. That is why ALEC members are actively working on these issues. ALEC currently has model legislation supporting ID and citizenship requirements for voters and is continually working on the best model solutions for these important issues. Election reform is both critical and complex, with multiple possible solutions for different states. Therefore, ALEC is uniquely positioned to raise awareness and provide effective solutions to ensure a legal, fair and open election system. ||



The States: Birthplace of Conservative Renaissance

BY DARCY OLSEN

When one door closes, another opens. The shut out of Republicans from Washington, D.C. may be a lucky break for conservatives if it means discovering the golden door ALEC's been focused on all along: the states.



In the American federalist system, the framers intended the states to be the building blocks of the nation. Although the courts have greatly eroded the principles of federalism over time, states remain far more equipped for change than Washington. The states can also shield taxpayers from federal overreach.

Ask Monica Ayala of Arizona. Faced with challenging learning disabilities, her son and daughter were falling behind the kids in their public school. Monica knew they needed an alternative, but tuition didn't fit the family budget. Then she heard about a state scholarship program that helps students with disabilities attend private schools. In just one semester, Ricky's reading level rose from

first grade to nearly the third. Cynthia's F's became B's. A constitutional challenge defeated this program in May, but state legislators are expected to fix and reboot by fall. Flexibility and fast-action are hallmarks of state policy.

Rising health care premiums on your mind? States can slash mandates and open markets to interstate insurance competition. Congested commute? States can reach out to private companies and build the express lanes you've been dreaming of. Need to incentivize job creation? At nine percent of GDP, reducing state and local taxes could give birth to small businesses, the largest determinant of employment across states.

The conservative's best tool yet may be the uncharted ground of state constitutions. Designed by the framers to be the primary guardians of individual rights, state constitutions are ripe with restrictions on government power. Indeed, early language from Virginia's constitution served as a model for the Bill of Rights itself. These principles should give conservatives the home field advantage, but until now, few have been vindicated in the courts.

One right sorely lacking in the U.S. Constitution is taxpayer standing, which gives citizens the ability to challenge almost any exercise of government power, particularly involving public funds.

Without this right in federal courts, taxpayers had no legal recourse this fall when Congress lavished preferential subsidies on private companies like GM and Chrysler.

Even as those billions flooded into private pockets, Arizona's Court of Appeals was putting the brakes on a similar deal concerning a \$100 million subsidy for a mall developer. The court declared the scheme unconstitutional owing to the gift clause, a taxpayer protection that prohibits the state and cities from awarding "any donation or grant, by subsidy or otherwise, to any individual, association or corporation."

New York, Maryland and 34 additional states enjoy similar clauses designed to stop special-interest giveaways. While state courts are not bound to follow precedent from neighboring states, they look intensely to other jurisdictions for guidance in interpreting similar language. As a result, the potential for one state's legal victory to shape outcomes nationwide is enormous.

Doctrines like the gift clause can reanimate an originalist view of government as one with strictly limited powers. Activists also will find promising articles that protect private property, secure crime victim rights and prohibit special laws benefiting a narrow portion of the public, as well as explicit state-

Darcy Olsen is the President & CEO of the Goldwater Institute.



January 20, 1981, President and Mrs. Ronald Reagan wave to the crowd waiting along the Inaugural parade route to see them, as they take the traditional ride down Pennsylvania Avenue.

ments guaranteeing liberties not specifically enumerated.

States also can offer protection against federal laws that threaten individual rights like the *Employee Free Choice Act*, a Pelosi-Reid priority. The act would eliminate the requirement of secret ballot votes, allowing unions to organize if a majority of employees signed cards stating their preference. Workers could be subject to intimidation by union organizers or employers if the right to a secret ballot disappears.

States, however, can guarantee the right to a secret ballot. To that end, Clint Bolick, Goldwater Institute litigation director, drafted a plain amendment for states that reads: "To preserve and protect the fundamental right of individuals to vote by secret ballot, where local state

or federal law requires elections for public office or public votes on ballot measures, or designations or authorizations of employee representation, the right of individuals to vote by secret ballot shall be guaranteed." Any state can adopt this amendment to preserve the right to vote by secret ballot.

Another congressional priority is a national health system wherein lawmakers have discussed banning private health insurance. To protect a patient's right to seek private care and a physician's right to offer it, two Arizona doctors drafted a state amendment to guarantee the freedom of this relationship, regardless of national plans. Although the initiative failed by a one-point margin in the fall elections, the idea's potency remains.

Amendments like these would create a constitutional clash between the Supremacy Clause, which provides that federal law supersedes conflicting state laws, and the interests of states in protecting individual rights. Given the important state interests in protecting the secret ballot and freedom of association, both provisions should prevail in challenges with federal law.

Win or lose, the bedrock rule of contests is you have to be present to win. The states offer a golden opportunity to expand freedom by proliferating free-market solutions state-by-state and deploying the federalism shield wherever possible. With innovations outside the Washington Beltway, we can generate the renaissance of conservative ideas we've been working for all along. ||

Just in Time for Summer

Delaware Legislators Rush Through Booze Tax

BY DAVID SIRKIN AND JONATHAN WILLIAMS

In our age of political vitriol and angst, there is not much that both sides can agree on, except perhaps that good laws are rarely rushed through the legislative process. Case in point is the sudden rush in the Delaware legislature to push through a huge new tax increase of as much as 136 percent on alcoholic beverages in the state. It wasn't until the end of the day Tuesday, June 9, that Majority Leader Pete Schwartzkopf even allowed the public to see House Bill 212.

Terrified by Delaware's looming \$751 million budget deficit, state lawmakers and Gov. Jack Markell are trying to squeeze more revenue from anywhere possible. That's certainly understandable and the state has made some tough choices, including an eight percent pay cut for 33,000 state employees. However, more than doubling the alcohol excise tax is likely to have unintended consequences, especially for Delaware's tourism industry.

Tourism is the economic lifeblood of many Delaware communities and generates over \$1.8 billion annually. Pleasant beaches and nice weather notwithstanding, tourism is not immune to economic downturns, as 1,500 recently unemployed hospitality workers can attest. Many individuals and families have to make tough choices with their finances right now and the impact of mistreating these out of state visitors, who are the golden geese of Delaware's economy, is not fully known. Before it is rushed to

the Governor for a quick signing, this bill needs to be given proper scrutiny so that its true consequences may be considered by the taxpayers.

When asked if they were worried about "fleecing the tourists" Joe Rogalsky, in the governor's office, pointed out that Delaware's current liquor taxes are lower than liquor taxes in neighboring states; in particular, he pointed to New Jersey. This recognizes the idea that people want to get the biggest bang for their buck, which at the moment is in Delaware. Unfortunately, according to the Federation of Tax Administrators, the proposed tax will make Delaware the least price competitive of all its neighbors, taxing liquor 300 percent higher per gallon than Maryland and 10 cents per gallon higher than New Jersey.

While it is true that few people make their vacation decisions based solely on the price of a Daiquiri, tourists are cautious citizens who look to many factors when deciding how to spend their hard earned vacation dollars. And the fact is that the hospitality industry of Delaware

will not just absorb this new tax, they will pass down the added cost to the people of Delaware, and to the tourists.

The other problem is one of pure tax avoidance. When Maryland dramatically raised its cigarette tax the revenue collected ended up being well below their projections. The reason was simple. All Maryland smokers had to do was go to a neighboring state with much lower cigarette taxes and stock up.

This tax increase didn't just depress cigarette sales but also associated convenience store sales as well as smokers bought more snacks, sodas, newspapers, etc., out of state. How difficult would it be for beach goers to simply bring their lower taxed alcohol with them instead of buying it in Delaware? This bill could actually result in less revenue for the state and for businesses.

Delaware merchants attract a lot of out of state shoppers with the promise of sales-tax-free shopping. By increasing the hidden excise tax on liquor the benefits of no sales tax quickly disappear as will the state's competitive advantage.

The problems brought on by years of rampant over-spending will not be solved by taking more from the taxpayer. Hopefully, Gov. Markel and the legislature will avoid these reactionary taxes that will be an economic liability. Taxpayers and tourists should not be punished for years of wasteful spending in Dover. In difficult economic times like these, it is important for legislators to always think before they tax. ||



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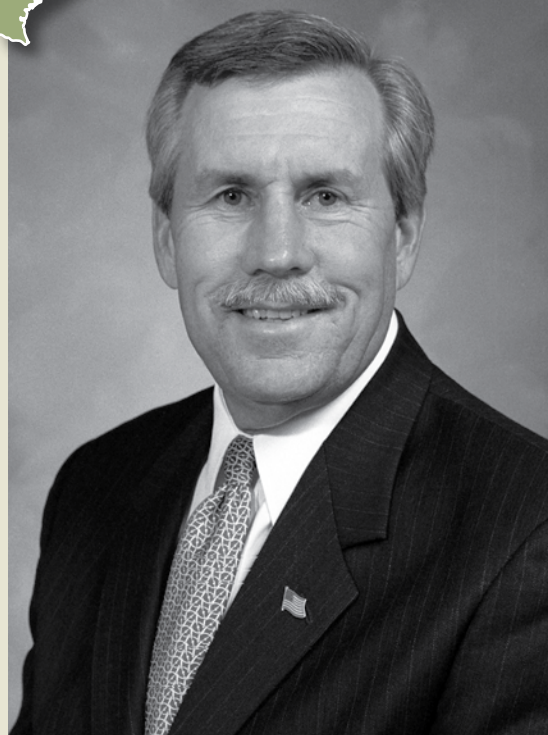
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ALEC Members' Suggestion to White House Web Site Supported

U.S. House of Representatives Minority Leader John Boehner (R-Ohio) proposed ALEC's idea for a 72-hour public review period of major spending bills on the White House's Web site and received nearly 1,000 votes, more than any other reform idea. Boehner said this 72-hour review proposal "would help to prevent taxpayer-funded outrages such as the empty 'Airport for No One' in the congressional district of Democratic Rep. John Murtha (D-Penn.) and huge bonuses for [American International Group Inc.] executives, is a reform proposal that been advocated by nonpartisan organizations such as the American Legislative Exchange Council (ALEC), a coalition of reform-minded state legislators, and the pro-transparency Sunlight Foundation."

ALEC Member Elected Texas Senate President Pro Tempore

Troy Fraser (R-Horsehoe Bay) was sworn in as President Pro Tempore of the Texas Senate on June 1, 2009. As President Pro-Tempore, Fraser is third in line for the Governor's seat and will be given the responsibility over the next 18 months to serve in that capacity in the event that Gov. Rick Perry and Lt. Gov. David Dewhurst are out of the state. "I am honored to serve as President Pro-Tempore and have the opportunity to serve as Governor when needed," Fraser said. "My tenure as President Pro-Tempore is a tribute to my parents – who worked three jobs to ensure that their children, grandchildren and great-grandchildren had more opportunities they then had."



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